04/24/2002 11:11 FAX 002
04/23/2002 14:12 FAX 001

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	2570
CONNECTION TEL	17033084315
SUBADDRESS	
CONNECTION ID	CM1
ST. TIME	04/23 14:08
USAGE T	04'22
PGS. SENT	15
RESULT	OK

immunex

Immunex Corporation
New Business Development
51 University Street
Seattle, WA 98101

Telephone: 206-587-0430
Facsimile: 206-233-0644
e-mail:

FAX MESSAGE - PLEASE DELIVER IMMEDIATELY

Send to: Examiner Gary B. Nichol, U.S. Patent and Trademark Office — FAX: (703) 308-4315

From: Joseph R. Baker — Date: April 23, 2002

No. of pages including this page: 15

Your Ref: 09/742,454 — Our Ref: 2968-B

RSTRICTION ELECTION FACSIMILE TRANSMISSION

PLEASE DELIVER THIS FAX IMMEDIATELY TO:

EXAMINER GARY B. NICHOL
ART UNIT 1642

If transmission problems occur contact Liz McCarthy at 206-587-0430 Ext. 4764.

immunex

Immunex Corporation
New Business Development
51 University Street
Seattle, WA 98101

Telephon : 206-587-0430
Facsimile: 206-233-0644
e-mail:

FAX MESSAGE - PLEASE DELIVER IMMEDIATELY

Send to: Examiner Gary B. Nichol
U.S. Patent and Trademark Office
FAX: (703) 308-4315

From: Joseph R. Baker
Date: ~~April 23, 2002~~ April 24, 2002

No. of pages including this page: ~~15~~ 16

Your Ref: 09/742,454 Our Ref: 2968-B

RSTRICTION ELECTION FACSIMILE TRANSMISSION

PLEASE DELIVER THIS FAX IMMEDIATELY TO:

EXAMINER GARY B. NICHOL
ART UNIT 1642

Per your request, here is a duplicate of the facsimile sent to you yesterday, with a copy of our transmission confirmation. Please confirm via return fax that this has been received. Thank you.

Liz McCarthy for Joseph R. Baker

If transmission problems occur contact Liz McCarthy at 206-587-0430 Ext. 4764.

Election/Amdt B #10 4/29/02

FAX RECEIVED
APR 25 2002
GROUP 1600

#10

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Steven R. Wiley

Docket No.: 2968-B

Group Art Unit: 1642

Serial No: 09/742,454

Examiner: Nickol, G.B.

Filed: December 19, 2000

For: TWEAK RECEPTOR

RESPONSE TO RESTRICTION REQUIREMENT AND SECOND PRELIMINARY AMENDMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

This paper is submitted in response to the Restriction Requirement dated March 26, 2002, restricting the claims to one of nine groups as briefly set forth below:

- Group I, Claims 1-23, drawn solely to a method of modulating angiogenesis with a TWEAK receptor antagonist, classified in class 424, subclass 184.1, 130.1. The following species are also allegedly found within this group: claim 6 is allegedly generic to a plurality of disclosed patentably distinct species comprising the following: a) soluble receptor fragments, b) antibodies, c) antisense, d) triple helix forming nucleic acids, e) peptides, f) small molecules. If "soluble receptor fragments" are elected, claim 8 is allegedly subject to the species: a) an Fc polypeptide and about 2 to 4 polypeptides comprising a TWEAK receptor extracellular domain or fragments or variants thereof capable of binding TWEAK; b) a leucine zipper domain and about 2 to 4 polypeptides comprising a TWEAK receptor extracellular domain or fragments or variants thereof capable of binding TWEAK; and c) a peptide linker and about 2 to 4 polypeptides comprising a TWEAK receptor extracellular domain or fragments or variants thereof capable of binding TWEAK. If the species of (a) above (an Fc polypeptide) is elected, claims 10-11 are allegedly generic to species: a) TWEAK receptor extracellular domain comprising amino acids 28-79 of SEQ ID NO:7; and b) TWEAK receptor

extracellular domain comprising amino acids 28-309 of SEQ ID NO:7. In addition, claims 17-18 are allegedly generic to a plurality of disclosed patentably distinct species comprising: a) ocular neovascularization, and b) solid tumor and claims 21-23 are allegedly generic to a plurality of disclosed patentably distinct species comprising any one of the chemotherapeutic agents listed in claims 21-23;

- Group II, Claims 1-4 and 24-27, drawn solely to a method of modulating angiogenesis with a TWEAK receptor agonist, classified in class 424, subclass 184.1, 130.1 with claim 27 allegedly generic to a plurality of disclosed patentably distinct species comprising: a) coronary artery disease, b) myocardial ischemia, c) myocardial infarction, d) angina pectoris, e) peripheral circulation deficits, f) limb ischemia/reperfusion injury, g) enhancement of wound healing, h) organ transplantation, I) reconnection of severed digits or limbs, j) vascular skin grafting, k) bypass surgery, or l) angioplasty;
- Group III, Claims 28-30, 43, and 45, drawn to an antagonist polypeptide classified in class 530, subclass 300, 350 with claim 28 allegedly generic to a plurality of patentably distinct species comprising: a) an Fc polypeptide and a TWEAK receptor extracellular domain or fragment or variant thereof capable of binding TWEAK; b) a leucine zipper domain and a TWEAK receptor extracellular domain or fragment or variant thereof capable of binding TWEAK; and c) a peptide linker and a TWEAK receptor extracellular domain or fragment or variant thereof capable of binding TWEAK and claims 29-30 allegedly generic to a plurality of disclosed patentably distinct species comprising: a) a TWEAK receptor extracellular domain comprising amino acids 28-79 of SEQ ID NO:7, and b) a TWEAK receptor extracellular domain comprising amino acids 28-209 of SEQ ID NO:7;
- Group IV, Claims 31-34, and 44, drawn to nucleic acids, vectors, host cells and method of producing a TWEAK receptor antagonist, classified in class 435, subclass 320.1, 325, 69.1, and class 536, subclass 23.5;
- Group V, Claims 35-38 drawn to a method of identifying a test compound that binds a TWEAK receptor extracellular domain, wherein the test compound is

not TWEAK, classified in class 435, subclass 4, claims 37 and 38 are further allegedly generic to a plurality of disclosed patentably distinct species comprising: a) wherein the modulation is stimulatory, and b) wherein the modulation is inhibitory;

- Group VI, Claims 35-38 drawn to a method of identifying a test compound that affects the interaction between a TWEAK and a TWEAK receptor, classified in class 435, subclass 7.8, claims 37 and 38 are further allegedly generic to a plurality of disclosed patentably distinct species comprising: a) wherein the modulation is stimulatory, and b) wherein the modulation is inhibitory;
- Group VII, Claims 35-38, drawn to a method of identifying a test compound that modulates the interaction between a TWEAK receptor and a TRAF, classified in class 435, subclass 4, claims 37 and 38 are further allegedly generic to a plurality of disclosed patentably distinct species comprising: a) wherein the modulation is stimulatory, and b) wherein the modulation is inhibitory;
- Group VIII, Claim 39, drawn to a method of modulating the binding of TWEAK to the TWEAK receptor, classified in class 424, subclass 184.1, 130.1, claim 39 is further allegedly generic to a plurality of disclosed patentably distinct species comprising: a) a polypeptide comprising a soluble TWEAK receptor extracellular domain, and b) an antibody that binds to the TWEAK receptor extracellular domain; and
- Group IX, Claims 40-42, drawn to a method for targeting a detectable label or chemotherapeutic to vascular tissue comprising contacting vascular tissue with an antibody that binds TWEAK receptor, classified in class 424, subclass 1.49.

Applicant provisionally elects, with traverse, Group I (Claims 1-23), drawn solely to a method of modulating angiogenesis with a TWEAK receptor antagonist, classified in class 424, subclass 184.1, 130.1.

With respect to claim 6, Applicant elects, with traverse, the species of "antibodies," claim 6 is generic to this species. With respect to claims 17 and 18, Applicant elects, with traverse, the species of "solid tumor," claim 16 is generic to this

species. Finally, with respect to claims 21-23, Applicant elects, with traverse, the species of "VEGF antagonists," claim 20 is generic to this species.

Applicant respectfully traverses the restriction between Groups I and VIII (claims 1-23 and 39, respectively). Applicant has canceled claims 24-38 and 40-45 (*i.e.*, subject matter of Groups III-VII and IX) without prejudice as drawn to a non-elected invention. Applicants respectfully request that pending claims 1-3, 6-23 and 39 be maintained in a single application encompassing a method of modulating angiogenesis with a TWEAK receptor antagonist and a method of modulating the binding of TWEAK to the TWEAK receptor, both classified in Class 424, Subclass 184.1, 130.1.

Applicant understands that there are two criteria for a proper Restriction Requirement according to MPEP §803:

(1) the invention must be independent or distinct as claims, and

(2) there must be a serious burden on the Examiner if the restriction is not required.

Moreover,

> "If the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicant submits that the claims of Group I and VIII are closely related and should remain in a single application. Restriction must be based upon their distinctness, as claimed. According to MPEP §802.01, this means that they are capable of separate manufacture, use or sale, and are patentable over each other. The Office Action has general comments that the invention(s) is/are distinct, however, the Office Action does not address the question of burden. Search of Class 424, subclass 184.1 and 130.1 as set forth in Group I overlaps with a search of Group VIII, also in Class 424, subclass 184.1 and 130.1. Accordingly, Groups I and VIII require searching only a single class and subclass. The Office Action provides no additional support regarding burden as is required when classification of both groups is identical by, for example, citation of patents as evidence of separate status in the art (MPEP §808.02). Accordingly Applicant respectfully request reconsideration of the restriction between Groups I and VIII.